

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

ALBERT SCHUHOLZ, )  
 )  
 Petitioner, )  
 v. ) Civil Action  
 ) No. 06-3290-CV-S-DW-H  
 JOSEPH E. GUNJA, Warden, )  
 )  
 Respondent. )

**ORDER AND JUDGMENT**

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the Magistrate in which he continues to assert that the Court possesses jurisdiction under 28 U.S.C. § 2241 to determine the legality of his sentence.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the petition should be dismissed on the grounds that it is not properly before this Court. Based on petitioner's assertions that the indictment against him was defective and he was falsely sentenced, it is clear that he is challenging the sentence imposed. He has failed to demonstrate that 28 U.S.C. §2255 is an ineffective or inadequate vehicle to test the legality of his sentence. Accordingly, the

Court finds that the conclusion of the Magistrate should be approved.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore ORDERED that petitioner's exceptions filed herein be, and they are hereby, CONSIDERED and OVERRULED. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis.

It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Dean Whipple  
Dean Whipple  
Chief, United States District Judge

Date: January 11, 2007